

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAMON BENTLEY,

Petitioner,

v.

CASE NO. 08-cv-13102
HONORABLE STEPHEN J. MURPHY, III

LLOYD RAPELJE,

Respondent.

/

ORDER DENYING MOTION TO ALTER OR AMENDMENT JUDGMENT

Before the Court is Petitioner Damon Bentley's motion to alter or amend judgment brought pursuant to Federal Rule of Civil Procedure 59 concerning the Court's dismissal of his habeas petition as untimely on April 20, 2009. Mr. Bentley submitted a notice of appeal to prison officials on May 23, 2009, which was accepted by the Court and deemed timely in accordance with Federal Rule of Appellate Procedure 4(a)(5). Mr. Bentley dated his present motion to alter or amend judgment on July 10, 2009.

Mr. Bentley's motion must be denied. First, the Court lacks jurisdiction to decide the motion because it was filed after his notice of appeal and the filing of his notice of appeal transferred jurisdiction of the case to the United States Court of Appeals for the Sixth Circuit. See *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993); see also *Pickens v. Howes*, 549 F.3d 377, 383 (6th Cir. 2008) (citing *First Nat. Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343, 345 n. 1 (6th Cir. 1976)); cf. Fed. R. App. P. 4(a)(B) ("If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) [e.g., a Rule 59(e) motion] – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.").

Second, Mr. Bentley's motion is untimely. A motion for reconsideration must be filed within 10 days after entry of the judgment, see Fed. R. Civ. P. 59(e); E.D. Mich. L. R. 7.1(g)(1), and district courts do not have discretion to enlarge the time for filing a motion to alter or amend judgment brought under Rule 59(e). See Fed. R. Civ. P. 6(b); *FHC Equities, LLC v. MBL Life Assurance Corp.*, 188 F.3d 678, 682 (6th Cir. 1999); see also *Erickson's Flooring & Supply Co., Inc. v. Basic Coatings, Inc.*, No. 04-74990, 2008 WL 2858774, *3 (E.D. Mich. July 23, 2008); *Peters v. Abramajtys*, 2000 WL 1872038, *1 (6th Cir. Dec. 14, 2000) (citing *Rhoden v. Campbell*, 153 F.3d 773, 773 (6th Cir. 1998)). Mr. Bentley's motion was not filed within 10 days after entry of the judgment and is therefore untimely. Accordingly, the Court **DENIES** his motion to alter or amend judgment.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: October 9, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 9, 2009, by electronic and/or ordinary mail.

s/Alissa Greer
Case Manager